

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 30, 2004

In Reply Refer To:
ISO New England, Inc.
Docket No. ER05-135-000

ISO New England, Inc.
Attn: Matthew F. Goldberg, Esq.
Senior Regulatory Counsel
One Sullivan Road
Holyoke, MA 01040-2841

Dear Mr. Goldberg:

1. On November 1, 2004, on behalf of ISO New England, Inc. (ISO-NE) and pursuant to section 205 of Federal Power Act (FPA), 16 U.S.C. § 824d (2000), you submitted revised tariff sheets (Revised Sheets) for ISO-NE's Capital Funding Tariff. According to the filing, the purpose of the Revised Sheets is to change the mechanism for reporting and tracking ISO-NE's projected and actual capital. According to the filing, this change is intended to create a more transparent and dynamic methodology that also conforms ISO-NE's capital budget and reporting processes more closely to those described in the Commission's order in Docket No. ER02-2153-000,¹ and as implemented by ISO-NE in quarterly reports in response to that order. The change represents a change only in the methodology for reporting and tracking ISO-NE's capital expenditures and does not change in any way the existing formula for allocating those potential charges to customers.

2. The Revised Sheets eliminate all references to Attachment A in the Capital Funding Tariff; Attachment A was the allocation schedule for ISO-NE's annual budgeted capital expenditures and the anticipated allocation of those expenditures to the services

¹ See *ISO New England, Inc.*, 100 FERC ¶ 61,130 (2002) (2002 Order).

specified under the Capital Funding Tariff. The annual filing of budgeted capital expenditures by ISO-NE as part of the Capital Funding Tariff itself would be replaced by quarterly reports² and an annual informational filing of ISO-NE's capital budget.³

3. ISO-NE claims that the quarterly reporting of actual capital expenditures is consistent with the requirements currently imposed on ISO-NE by the 2002 Order. ISO-NE asserts that the proposed quarterly reporting will eliminate the requirement to calculate future potential charges under the Capital Funding Tariff based on budgeted, rather than actual, expenditures and the need to annually update the budgeted expenditures to reflect actual expenditures. ISO-NE states that the expansion of the quarterly reports to include projections of future capital expenditures will increase the transparency of ISO-NE's capital program. ISO-NE claims that the substance of these changes has been discussed with both the NEPOOL Budget and Finance Subcommittee and the NEPOOL Participants Committee, and elicited no opposition. The capital budget was prepared by ISO-NE, reviewed by its senior management, and reviewed by the NEPOOL Budget and Finance Subcommittee. On October 1, 2004, the NEPOOL Participants Committee passed a resolution unanimously approving the capital budget, with three abstentions. ISO-NE's Board of Directors reviewed and approved the budget at its October 21, 2004 meeting.

4. Notice of the filing was published in the *Federal Register*, 69 Fed. Reg. 67,338 (2004), with protests and interventions due on or before November 21, 2004. Timely motions to intervene were filed by the Connecticut Department of Public Utility Control, the NEPOOL Participants Committee, and the Northeast Utilities Service Company on behalf of the Northeast Utilities Operating Companies and Select Energy, Inc. The NEPOOL Participants Committee also filed a protest. ISO-NE filed an answer in response to the NEPOOL Participants Committee's protest.

² The quarterly reports will specify ISO-NE's prior year spending on multi-year projects, year-to-date spending, and a forecast of next calendar year spending. Additionally, ISO-NE will file a schedule of the unamortized costs of ISO-NE's funded capital, expenditures, and an allocation of those costs to Schedules 1, 2, and 3 of ISO-NE's Administrative Cost Tariff, also on a quarterly basis.

³ ISO-NE will submit its proposed budget for capital expenditures to the NEPOOL Budget and Finance Subcommittee and the NEPOOL Participant Committee for review. ISO-NE will then report the results of the NEPOOL reviews to the ISO-NE Board of Directors, which will then have the authority to approve the final ISO-NE capital budget. Following such approval, ISO-NE will file its annual capital budget with the Commission for informational purposes and post it on the ISO-NE website.

5. The NEPOOL Participants Committee states that it supports the instant filing to the extent that it seeks Commission approval for ISO-NE to collect its capital expenditures from the NEPOOL Participants, in the event that ISO-NE is unable to obtain third-party financing for those expenditures. However, the NEPOOL Participants Committee claims that, while the 2005 capital budget was reviewed within the NEPOOL process, there was no such opportunity for review and comments on ISO-NE's proposed changes to the Capital Funding Tariff, proposed in the instant filing. The NEPOOL Participants Committee claims there are three issues which require clarification before the Commission should accept the instant filing.

6. The first issue relates to the effect of NEPOOL input on a proposed ISO-NE annual capital budget. The NEPOOL Participants Committee notes that the instant filing proposes, in revised section 8.1 of the Capital Funding Tariff, that the NEPOOL Participants Committee have a non-binding vote on ISO-NE's annual capital budget, and also proposes that the changes reflected in the instant filing become effective January 1, 2005, without regard to whether ISO-NE begins functioning as a regional transmission organization by that time. The NEPOOL Participants Committee states, however, that, if there are any further changes to the budget before ISO-NE begins functioning as a regional transmission organization, such changes to the budget should require the NEPOOL Participants Committee's approval. The NEPOOL Participants Committee requests that the Commission provide for an expedited, fact-based review of any ISO-NE budget not approved or supported by the NEPOOL Participants Committee, before permitting recovery of any increased budget amounts in dispute.

7. Second, the NEPOOL Participants Committee states that the Commission should clarify the legal effect of future annual capital budget filings by ISO-NE. The NEPOOL Participants Committee notes that revised section 8.1 of the Capital Funding Tariff stipulates that ISO-NE will file its capital budget with the Commission for informational purposes at least sixty days prior to the beginning of its operating year. The NEPOOL Participants Committee states that, while an informational filing might be appropriate if there is no proposed change in potential charges to customers under the Capital Funding Tariff, if changes are made to the annual capital budget, the FPA requires that such changes be made only through a section 205 filing given that customers will be paying different charges under the Capital Funding Tariff (if ISO-NE is unable to secure third-party financing or if there is acceleration under existing financings).

8. Third, the NEPOOL Participants Committee claims that, throughout the instant filing, ISO-NE has altered the language describing when it would collect charges under the Capital Funding Tariff from "early termination or required accelerated repayment" to "termination, acceleration or required repayment" of that financing. According to the NEPOOL Participants Committee, this language authorizes ISO-NE to collect charges under the Capital Funding Tariff when the financing is being repaid according to its terms, even though it may have other sources of funds for the scheduled repayment.

The NEPOOL Participants Committee asks the Commission to clarify that this change in language does not modify the contingent nature of the collection mechanism in the Capital Funding Tariff.

9. With respect to the NEPOOL Participants Committee's request to conduct an expedited review process for any ISO-NE capital budget that did not gain the approval of the NEPOOL Participants Committee, ISO-NE states in its answer that while it believes that it is not required to seek such approval, it will continue to work with the NEPOOL Budget and Finance Subcommittee and the NEPOOL Participants Committee in developing and reviewing ISO-NE's operating and capital budgets, and will continue to seek support for those budgets.

10. Regarding the legal effect of future filings, ISO-NE states in its answer that the revised Capital Funding Tariff, in fact, provides for Commission review of proposed ISO-NE capital expenditures. ISO-NE reiterates that it has adopted the quarterly filing approach initially adopted by the Commission in the 2002 Order. ISO-NE argues that these quarterly filings will provide far more specific information, and even more direct and frequent accountability, than current provisions of the Capital Funding Tariff, as any proposed changes from the annual budget may be protested and reviewed by the Commission. In this regard, ISO-NE states that it has no objection to clarifying in Capital Funding Tariff section 8.2 that such quarterly filings are to be made pursuant to section 205 of the FPA.

11. In response to the NEPOOL Participants Committee's concern that the revisions in the instant filing must not modify the contingent nature of the collection mechanism in the Capital Funding Tariff, ISO-NE confirms that no such modification is intended (*i.e.*, no charge will be collected when financing is being repaid according to its terms). ISO-NE states that the revised Capital Funding Tariff language was designed to account for a scenario under its \$39 million ten-year note financing, which requires full repayment of the principal balance of the notes at the end of that ten-year period. According to ISO-NE, this necessitated the use, in the Capital Funding Tariff revisions, of the phrase "required repayment" rather than the more limited "required accelerated repayment," because repayment at the end of the ten-year period is required by the terms of the notes and would not represent "acceleration." ISO-NE explains that, if the notes have not been fully paid off at the end of the ten-year period, and no refinancing of the remaining balance is available to ISO-NE at that time, then ISO-NE would need to be able to collect an Early Amortization Charge from its customers to pay the remaining balance. ISO-NE adds that this represents only a contingent scenario, because ISO-NE expects that a variety of refinancing options would, in fact, be available at the end of that ten-year period.

Discussion

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ISO-NE's answer because it has provided information that assisted us in our decision-making process.

13. Consistent with the apparent agreement of the NEPOOL Participants Committee and ISO-NE that the quarterly filings should be made pursuant to section 205 of the FPA, the Commission will require that all such quarterly filings made by ISO-NE be filed pursuant to section 205 of the FPA. This will ensure that the proposed capital expenditures are just and reasonable, and will give the NEPOOL Participants Committee and other interested persons an opportunity to object to ISO-NE's proposed capital budget.

14. In addition, we will also require ISO-NE to file its annual capital budget pursuant to section 205 of the FPA. The Capital Funding Tariff permits ISO-NE to collect charges from the NEPOOL Participants (in the event that ISO-NE is unable to find replacement financing for its budgeted capital costs). Even though the charges collectable under the Capital Funding Tariff are contingent, these charges may, in fact, be charged to NEPOOL Participants, and therefore must be filed with the Commission. To ensure just and reasonable rates, the Commission must have the ability to conduct a full review of ISO-NE's capital budget pursuant to section 205 of the FPA.

15. We will therefore require ISO-NE to make a compliance filing, within 30 days of the date of issuance of this letter order, amending sections 8.1 and 8.2 to state that all quarterly and annual capital budget and expenditure filings will be filed pursuant to, and subject to Commission review under, section 205 of the FPA.

16. With respect to the revisions to the contingent nature of the collection mechanism, ISO-NE explains that the contingent nature of the collection mechanism in the Capital Funding Tariff is essentially unchanged. Like the NEPOOL Participants Committee, the Commission encourages ISO-NE to maintain a contingent collection mechanism, but the Commission agrees with ISO-NE that the language in the Capital Funding Tariff should be altered to account for the scenario outlined by ISO-NE with regard to its \$39 million ten-year note financing.

17. The proposed Revised Sheets are hereby accepted for filing, as revised, effective January 1, 2005. ISO-NE is hereby directed to submit a compliance filing, as discussed above, within 30 days of the date of issuance of this letter order.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.